



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

ADAAA Case Repository

Labor and Employment Law Program

4-13-2005

EEOC v. Autoliv ASP, INC., an Indiana Corporation

Judge Ted Stewart

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/adaaa>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. [Please help support our student research fellowship program with a gift to the Legal Repositories!](#)

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in ADAAA Case Repository by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

EEOC v. Autoliv ASP, INc., an Indiana Corporation

Keywords

EEOC, Autoliv ASP Inc an Indiana Corporation, 1:03-CV-00110TS, Consent Decree, Failure to Accomodate, Assignment, Termination, Disparate Treatment, Automotive, Employment Law, ADAAA

40

Complaint alleges that Autoliv discriminated against Judy Holt Day ("Ms. Day") by denying her a reasonable accommodation, denying her reassignment to another position, and terminating her because of her disability. The Complaint alleges that Autoliv maintains a policy and/or practice of denying reasonable accommodation to qualified individuals with disabilities. Autoliv categorically denies these allegations.

The parties to this Consent Decree do not object to the jurisdiction of the Court over this action and waive a hearing and the Entry of Findings of Fact and Conclusions of Law.

It is **ORDERED, ADJUDGED AND DECREED:**

1. This Consent Decree resolves all claims arising out of the issues between the Commission and Autoliv in this lawsuit, including claims on behalf of Judy Holt Day for backpay, front pay, compensatory and punitive damages, injunctive relief, costs, and attorneys' fees.

I. INJUNCTION

2. In all matters arising from or relating to employment, Autoliv and its officers, agents, employees, successors, and assigns, and all of those in active concert or participation with them, or any of them, are enjoined from engaging in any employment practice which unlawfully discriminates against an employee or applicant covered under the Americans with Disabilities Act on the basis of disability. Prohibited discrimination includes, but is not limited to:

- A. refusing to provide a reasonable accommodation to a qualified individual with a disability as defined by the Americans With Disabilities Act ("QID");
- B. refusing to comply with any applicable duty to provide reassignment as a reasonable accommodation to a QID;
- C. discharging a QID because of his/her disability;

- D. maintaining any practice or policy that violates the ADA by denying any QID of employment opportunities because of such QID's disability; or
 - E. discriminating against a QID on the basis of his/her disability in the terms, conditions and privileges of their employment.
3. This injunction neither expands nor contracts Autoliv's rights and obligations under the ADA.

II. NON-RETALIATION

4. Autoliv, its officers, agents, employees, successors, assigns, and all those in active concert or participation with them, or any of them, shall not engage in reprisal or retaliation of any kind against Judy Holt Day or any person because such person:
- A. opposed any practice made unlawful under the ADA;
 - B. filed a charge of discrimination with the Commission or a state agency or testified or participated in any manner in any investigation, proceeding or hearing under the ADA;
 - C. requested and/or received relief in accordance with this Consent Decree;
 - D. participated in any manner in this action or in the investigation giving rise to this action; or
 - E. asserted any rights under this Consent Decree.

III. MONETARY RELIEF AND OTHER RELIEF FOR DAY

5. Within ten (10) days after this Consent Decree is approved by the Court, Autoliv will pay seventy thousand dollars (\$70,000.00) total to Judy Holt Day in settlement of her claims. The settlement amount will be paid in two sums:

A. twenty thousand dollars (\$20,000.00) in lost wages, less any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings; and

B. fifty thousand dollars (\$50,000.00) representing compensatory damages.

Autoliv shall make payment of the amounts described in paragraphs 5.A. and 5.B. above in the form of a business check made payable to Judy Holt Day which will be sent to her via certified mail at the address provided by the EEOC with a copy of the check sent to the attention of the Regional Attorney of EEOC's Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189. Autoliv shall be responsible for reporting the amount paid to the Internal Revenue Service and shall be responsible for paying the employer's share of FUTA and FICA on any amounts designated as lost wages. Autoliv will issue a United States Internal Revenue Service Form 1099 to Ms. Day for any amount designated as compensatory damages.

6. In accordance with Autoliv's representation of its usual practice, in response to any employment inquiries or reference checks concerning Ms. Day, Autoliv shall only provide Ms. Day's dates of employment, job titles, and salary. This provision shall survive the expiration of this Decree.

IV. EMPLOYMENT PRACTICES

7. Within thirty (30) days of the entry of this Decree, Autoliv shall review and, as appropriate, revise all of its employment policies and procedures regarding its obligations under the Americans with Disabilities Act, including, but not limited to, its Employee Handbook, its Transitional Duty Program, and all other procedures to ensure that its policies and procedures achieve the following objectives, at a minimum:

- A. Provide notice to all Autoliv employees that Autoliv shall not engage in any employment practice or policy which violates the ADA.
- B. Provide notice to all Autoliv employees that Autoliv shall not engage in any employment practice or policy that retaliates against any person who exercises rights under the ADA.
- C. Provide notice to all Autoliv employees that pursuant to the ADA, Autoliv shall reasonably accommodate all qualified individuals with disabilities in accordance with the ADA.
- D. Provide notice to all Autoliv employees that a reasonable accommodation may include, but is not limited to, a reassignment from the employee's current job to an existing, vacant position that he/she desires and is qualified to perform with or without accommodation.
- E. Provide notice to all Autoliv employees of Autoliv's and the employee's obligation under the ADA to engage in an interactive process in determining a reasonable accommodation.
- F. Ensure that Autoliv's policies, procedures and practices are written, distributed and implemented so as to comply with Autoliv's obligations under the ADA. Such policies shall not set fixed cut off dates for QIDs to return to their positions after entering a modified-duty, light-duty or transitional duty program or be terminated solely because of the passage of a set period of time.
- G. Ensure that Autoliv's policies, procedures, and practices shall include reassignment of a QID from his/her current job to an existing, vacant position

that he/she desires and is qualified to perform with or without accommodation, in accordance with the ADA.

8. Autoliv shall post and distribute to all its employees in Utah the applicable policies and procedures for requesting reasonable accommodations, including reassignment, under the ADA.

9. Within thirty (30) days of the issuance or implementation of any new or revised Autoliv employee handbook or other policies, practices or procedures affecting employee rights under the ADA, Autoliv shall notify all Autoliv employees employed in Utah of such new or revised policy or procedure by any means available, including, but not limited to, posting, distribution, or e-mail.

10. Within thirty (30) days of the issuance or implementation of any new or revised Autoliv policies as required by this Decree, Autoliv will provide the Commission copies of all such policies or procedures.

11. In addition to the training required under Paragraph 12 of this Decree, Autoliv shall provide training to all employees responsible for administering Autoliv's modified-duty, light-duty or transitional duty programs to ensure that in administering Autoliv's modified-duty, light-duty or transitional programs, Autoliv will be in compliance with the ADA.

V. TRAINING

12. Defendant shall provide training on the employment provisions of the ADA according to the following terms:

A. Defendant shall provide training of at least one hour within four (4) months of entry of this Decree to all employees, supervisors, and managers in its Utah

facilities and all employees, including supervisors and managers, shall attend this training. Duplicate or videotaped sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training.

- B. Defendant shall provide additional training each year during the second and third years of this Decree to all employees responsible for implementing ADA policies and procedures and all employees responsible for implementing ADA policies and procedures shall attend the training. The training will include federal employment discrimination laws, including the ADA. Duplicate sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training.
- C. Defendant shall select a qualified trainer(s) to conduct training on the employment provisions of the ADA and shall submit the trainer(s)'s name, resume, training agenda, and the date(s) of the proposed training to the Regional Attorney of the Commission's Albuquerque Area Office within sixty (60) days of the entry of this Consent Decree. During the second and third years of this Decree, the above information concerning the proposed training shall be submitted to the Regional Attorney at least forty-five (45) days prior to the training.
- D. The annual training required by this Decree shall include a minimum of one hour of instruction. All personnel designated in Paragraph 11.A. shall both register and attend the training. The registry of attendance shall be retained by

Defendant at least for the duration of the Decree.

- E. The training, at a minimum, shall include an overview of the requirements of the ADA; Autoliv's obligations under the ADA; applicant and employee rights under the ADA; non-discrimination in all phases of employment including, recruitment, hiring, and discharge; recruitment; reasonable accommodation; reassignment as a reasonable accommodation; procedures for addressing reasonable accommodation requests; examples of accommodations for qualified individuals with disabilities; the importance of the interactive process; the absence in Autoliv's new policies of any automatic or fixed date cut-off resulting in terminations or failure to accommodate solely based on the passage of a period of time; awareness of issues affecting employees and applicants who have disabilities; Autoliv's commitment to meeting the requirements of the ADA; and, Autoliv's commitment to engage in the interactive process required by the ADA for qualified individuals with disabilities to determine an appropriate accommodation , including, but not limited to, reassignment.
- F. Immediately following the training sessions, Defendant's top level human resource manager at the applicable facility in Utah will speak to the attendees about: (1) potential discipline that can be taken against supervisors and managers who commit acts of disability discrimination or who permit disability discrimination to occur in the workplace; (2) the importance of maintaining a workplace that encourages the interactive process between the employer and employees who are qualified individuals with disabilities seeking

accommodation; and (3) the employer's policies prohibiting discrimination based upon disability. This time shall not be counted toward the one-hour minimum training required in Paragraph 12.D.

G. For the duration of the decree, at or around the time of hire, new employees shall view a video tape of the training and shall be given any written material disseminated at the training and any policies and procedures related to the ADA.

13. The Commission, at its discretion, may designate Commission representatives to attend and fully participate in the seminar-training sessions described above.

VI. POSTING OF NOTICE

14. Within thirty (30) days of the entry of this Decree, Autoliv will post the Notice attached as Exhibit A in all of its facilities in the state of Utah. The Notice will be posted in the same approximate locations as the other labor and employment postings for the duration of this Consent Decree. The Notice shall be the same type, size, and style as Exhibit "A."

VII. REPORTING AND COMPLIANCE

15. Autoliv shall report in writing to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette, NW, Suite 900, Albuquerque, New Mexico, 87102, beginning six months from the date of the entry of this Decree, and thereafter every six months for the duration of the Decree the following information:

A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of ADA discrimination, including but not limited to changes relating to modified, transitional or light-duty policies or procedures;

B. The registries of persons attending each of the seminar-training sessions required in paragraph 12 of this Decree and a list of current employees on the day of the seminar-training session.

C. Confirmation that the Notice required in Paragraph 13 of this Decree was posted and a listing of the locations where it was posted.

16. The Commission, upon reasonable prior written notice, shall have the right to enter and inspect Autoliv's facilities to ensure compliance with this Decree.

VIII. COSTS AND DURATION

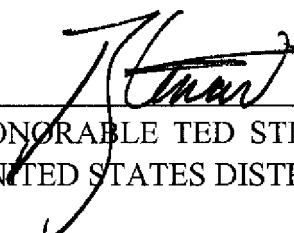
17. The parties shall bear their respective attorneys' fees and costs incurred in this action up to the date of entry of this Consent Decree.

18. This Court shall retain jurisdiction of this action for a period of three (3) years after entry of the Consent Decree. During the term of the Decree the Commission may petition the Court for compliance with this Decree. Should the Court determine that Defendant has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its noncompliance, may be ordered.

19. This Consent Decree shall expire by its own terms at the end of three (3) years without further action by the parties.

20. The parties agree to the entry of this Decree and judgment subject to final approval by the Court.

ENTERED AND ORDERED this 13th day of April, 2005.

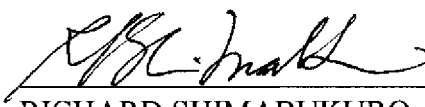

HONORABLE TED STEWART
UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO this 24th day of March, 2005.


JANET HUGIE SMITH, Esq.


PAUL C. BURKE, Esq.

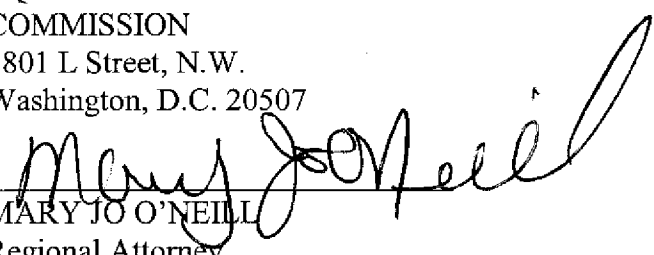
RAY, QUINNEY & NEBEKER
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
(801) 532-1500

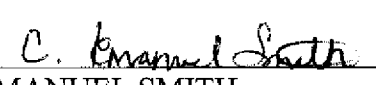

RICHARD SHIMABUKURO
Associate General Counsel
Legal Department
Autoliv ASP, Inc.
3350 Airport Road
Ogden, Utah 84405

Attorneys for Defendant

Eric S. Dreiband
General Counsel

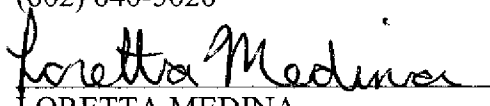
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507


MARY JO O'NEILL
Regional Attorney


C. EMANUEL SMITH
Supervisory Trial Attorney

MICHELLE G. MARSHALL
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Phoenix District Office
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012
(602) 640-5020


LORETTA MEDINA
Senior Trial Attorney

VERONICA A. MOLINA
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
505 Marquette NW, Suite 900
Albuquerque, New Mexico 87102
(505) 248-5230

Attorneys for Plaintiff

NOTICE TO ALL EMPLOYEES OF AUTOLIV

Disability discrimination in the work place is against federal law, the Americans with Disabilities Act (the "ADA"). The ADA covers qualified individuals with disabilities, persons who are regarded as disabled or have a record of a disability. Under the ADA, it is unlawful for an employer to discriminate on the basis of disability or to fail to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless providing such an accommodation would impose an undue hardship on the employer.

Autoliv will not discriminate against any individual because of his/her disability(s). Autoliv will make reasonable accommodation for the known disabilities of qualified individuals with disabilities under the ADA in the application and hiring process as well as in all other aspects of employment as is required by law. Accommodation includes the potential of reassignment to a vacant position which a qualified individual with a disability desires and is qualified to perform with or without accommodation.

If you believe you have been subjected to disability discrimination during the course of your employment with Autoliv you have the right to seek assistance from:

(1) The United States Equal Employment Opportunity Commission (the EEOC) at either the Phoenix District Office, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012-2504, (602) 640-5000, TTY or the Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, (505) 248-5201, TTY (505) 248-5240.

or

(2) The Utah Anti-Discrimination Division 160 East 300 South, Post Office Box 146630, Salt Lake City Utah 84114, (801) 530-6801.

You have the right to file a charge with the EEOC or the UADD if you believe you are being subjected to disability discrimination.

It is also unlawful for any management official or employee of Autoliv to discriminate by retaliation against an individual because you have opposed an act or practice made unlawful by the ADA, or because you made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under the ADA. It is also unlawful for any management official or employee of Autoliv to coerce, interfere, intimidate or threaten any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA. If you believe any acts to retaliate, coerce, intimidate, or threaten you have been made, you should contact the EEOC or UADD at the addresses and numbers listed above.

EXHIBIT A

United States District Court
for the
District of Utah
April 19, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cv-00110

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Carlie Christensen, Esq.
US ATTORNEY'S OFFICE

EMAIL

Mary Jo O'Neill, Esq.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PHOENIX DISTRICT OFFICE
3300 N CENTRAL AVE STE 690
PHOENIX, AZ 85012-1848
EMAIL

Loretta Medina, Esq.
EEOC
505 MARQUETTE NW STE 900
ALBUQUERQUE, NM 87102

Ms. Janet Hugie Smith, Esq.
RAY QUINNEY & NEBEKER (SLC)
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

Ms. Lois A. Baar, Esq.
JANOVE BAAR ASSOC
9 EXCHANGE PL STE 1112
SALT LAKE CITY, UT 84111
EMAIL